

TRANSPORTATION REPORT

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Passing A Surface Transportation Reauthorization Bill

This is the week (and the next several weeks) that Congress will in all probability, hammer out a Surface Transportation Reauthorization bill (what used to be known as the Highway bill).

The House and now the Senate is focusing on the Transportation bills. A great deal of this information has been garnered from many sources and with the help of Meyers & Associates (Alliance for Rail Competition Washington representatives), - this is a summary of the Transportation bill saga being carried out in DC right now. This will be a summary written for those not intimately familiar with the maneuvering that goes with the movement of complex bills. When it is all said and done - most likely - it will be that the Surface Transportation Reauthorization Bill will be hammered out in Conference Committee made up of House and Senate members.

Each Committee must show a "mark-up" on a bill (finalizes a bill and a vote to pass it out of Committee) before their bill or portion of their bill is ready for floor action - which many times is part of an amendment process.

What bills are involved so far in the movement of STR that shippers are following?

S 1813 - Moving Ahead for Progress for the Twenty-First Century Act (Highway bill)
H.R. 3548 - House XL pipeline bill
PL 112-30 - Surface Transportation funding - extending - funding to March 31st
HR 7 - American Energy and Infrastructure Jobs Act of 2012
HR 658 - FAA reauthorization bill
S 1950 - Commerce, Science and Transportation Committee freight provisions in a safety title
S.49 - Senate Judiciary Committee, the Railroad Antitrust Enforcement Act of 2011.

House - focus on the Transportation & Infrastructure Committee, House Energy and Commerce Committee and House Leadership

The House T&I focused last week (last week in January and first week in February) on the Surface Transportation Reauthorization bill (includes a whole host of non-transportation items - so we call it an almost Surface Transportation reauth bill (STR)). These bills are multi-committee bills - meaning more than one House or Senate (as the case may be) committee will have jurisdiction over different aspects of the bill.

House committees finished marking up pieces of that chamber's surface transportation reauthorization bill (well, almost) the attention turns back to the Senate the week of February 6th. The House bill version was a fairly contentious back and forth - with many focusing on the expense and cost of the STR bill. There are still a number of hotly contested amendments that floor action may have to wade through when this bill comes to the floor - including XL pipeline, safety issues, Positive Train Control action, higher highway truck weight limits, etc.

In the House, Energy and Commerce Committee held a markup midweek on H.R. 3548, the Keystone XL pipeline approval bill which would shift authority for permitting the pipeline from

the State Department to the Federal Energy Regulatory Commission, which may then be rolled into the Surface Transportation Reauthorization Bill. Overruling President Obama's rejection of plans to build the pipeline linking Western Canada to Texas refineries has become a rallying cry for congressional Republicans.

The House Rules Committee will make an announcement later this week as to how the amendment process for the House bill (H.R. 7) will be handled. This announcement may also release the details of the mysterious \$40 billion "black box" funding offset on which the House bill relies.

Senate - focus in the Commerce Committee, Finance Committee, Environment and Public Works Committee, Banking Committee, Judiciary Committee and Senate Leadership

The Finance Committee (led by Senator Baucus) marked up the revenue title of the bill early in the week. The documents posted on the Finance website list \$9.6 billion in funding offsets but also says that "The Senate Finance Committee staff is reviewing additional offsets that have been discussed with Member staffs but have not seen final scores or specificity. The Chairman intends to provide these offsets in a modification and will notify Members as soon as possible." Remember that the concept is that if there is spending over and above budget, spending offsets have to be found to provide justification of the extra expenditures. As of mid-week (February 8th), it is estimated there is a \$12 billion gap between the two-year bill's \$109 billion cost and the projected resources in the Highway Trust Fund. Note that the House bill version is a 5 year bill with estimated price tag of \$260 billion. Baucus has offered the tax-writing panel's ranking Republican, Orrin G. Hatch of Utah, a menu of cost offsets worth about \$17 billion. He is asking Republican members to sign off on enough of the alternatives to cover the funding hole. If Baucus and Hatch can reach a bipartisan funding deal, it would put the Senate in a stronger position to advance its approach to reauthorizing surface transportation programs before the latest short-term extension (PL 112-30) expires March 31.

Here is the plan laid out by Majority Leader Reid - once the Senate votes on the FAA conference report (60 votes required for adoption), Majority Leader Reid has announced that he intends to move that the Senate proceed to the consideration of the surface transportation bill. This begs two questions. First: will Republicans support a motion to proceed before Finance finishes its work and before the details of the Commerce Committee's portion of the bill are worked out on a bipartisan basis?

This leads directly into a second question: what, exactly, will be in the Senate bill? Majority Leader Reid who is responsible for putting together one amendment in the nature of a substitute for the EPW-reported bill (S. 1813) that contains not just the EPW bill but the titles of the bill from the Banking, Commerce, and Finance Committees as well. However, things sometimes fall in and out of the substitute that were or were not approved by committee. In one case, Republicans on the Commerce Committee oppose the freight policy portions that were approved by the panel. In another case, Senate Commerce Committee Democrats now intend to add a hundred or so pages of rail policy (the "National Rail System Preservation, Expansion, and Development Act of 2012") to the Reid substitute, language which has not been approved by any committee and which has not actually been introduced in the Senate in bill form yet (at least as far as a cursory THOMAS search goes). It looks like the STB reauthorization and some of the captive shipper provisions are still part of the Commerce Committee submittals for the final bill. This can, of course, be subject to all the issues surrounding this STR bill.

Even Republicans who support the overall bill may be reluctant to vote in favor of the motion to proceed until the final language of the Reid substitute is available (the old "pig in a poke" argument).

Senate Financing Committee Talks - A Murky Mess

Reid's plan to bring the Senate bill to the floor by midweek awaits a Finance Committee markup of a financing package to plug the estimated \$12 billion gap between the two-year bill's \$109 billion cost and the projected resources in the Highway Trust Fund.

Reid and Finance Chairman Max Baucus, D-Mont., said separately last week that they were expecting a Finance markup of the highway bill as early as Tuesday.

"I'll move to it," Reid said Feb. 2. "It will be marked up next week."

Despite some differences on the Commerce, Science and Transportation Committee over freight provisions in a safety title (S 1950), other pieces of the legislative package have been assembled with bipartisan cooperation.

Even the Environment and Public Works Committee — led by a staunch liberal in Chairwoman Barbara Boxer, D-Calif., and a die-hard conservative in ranking member James M. Inhofe, R-Okla. — approved the provisions unanimously in November.

And while Baucus' efforts to get Hatch and other Republicans on board with revenue raisers has frustrated some Democrats, it ultimately could boost the bill's prospects for passage.

By today, Senate Finance Chairman Max Baucus' efforts to broker a bipartisan agreement that would pay for a two-year, \$109 billion surface transportation bill appear to have run into Republican opposition.

The panel's top Republican filed amendments to strip out most of the spending offsets offered by Baucus. The proposals by Utah Republican Orrin G. Hatch would endorse House proposals to expand oil and gas drilling in the Arctic and protected coastal waters, while also approving the Keystone XL oil pipeline from Canada.

Hatch's amendments threaten to complicate plans by Majority Leader Harry Reid, D-Nev., to pass the highway bill (S 1813) in the Senate this week. After weeks of discussions, Baucus, a Montana Democrat, released a package of about \$9.6 billion in spending offsets for the bill,

which advanced out of the Environment and Public Works Committee in November with unanimous support.

That was still short of the more than \$12.2 billion that the Congressional Budget Office estimates will be needed to close the gap between the legislation's cost and the resources available in the Highway Trust Fund. Committee aides said Baucus was working on other spending offsets to cover the remaining \$2.6 billion that would be ready in advance of the markup.

The Hatch amendment, though, would eliminate all but one of the six offsets that Baucus unveiled late last week, retaining only a \$3 billion transfer from the Leaking Underground Storage Tank Trust Fund to the Highway Trust Fund.

Instead, Hatch would add the drilling provision included in a House bill ([HR 3864](#)) that is intended to help pay for the chamber's five-year surface transportation bill. That proposal would allow energy leasing in the Arctic National Wildlife Refuge and waters off California and in the Eastern Gulf — ideas that are poison pills for most Democrats.

He also would tack on language ([S 2401](#)) that would immediately approve the Keystone XL pipeline, a project that has become a rallying cry for many Republican lawmakers trying to use the White House rejection of the plan as a campaign issue against President Obama.

In contrast to the partisan fights in committee last week over the House bill, Senate leaders were hoping to proceed smoothly on a smaller, more focused proposal that enjoyed bipartisan support. Still, Republicans on the Environment and Public Works Committee have said all along that their support for the surface transportation measure on the floor was contingent on bipartisan agreement on the financing package.

An alert sent Monday by the conservative group Heritage Action for America may also lead some Senate Republicans to have second thoughts about the highway bill. The group said that by “continuing to fund programs above dedicated revenue sources” the Senate bill will “inevitably lead to revenue increases . . . or bailouts.”

Other offsets proposed by Baucus include dedicating for the highway fund the taxes on “gas guzzler” cars that do not meet fuel efficiency standards, revoking the passports of tax scofflaws to force them to pay up and diverting imported vehicle tariffs to the Highway Trust Fund.

Another Baucus offset has encountered resistance from Sen. Michael D. Crapo, R-Idaho. That provision would bar paper manufacturers producing a papermaking byproduct called “black liquor” from taking a tax credit intended for producers of cellulosic biofuels.

Preventing paper manufacturers from taking the tax credit would generate an estimated \$2.79 billion over a decade, but American Forest and Paper Association President Donna Harman called the idea a “retroactive tax increase” and “bad tax policy.”

Other amendments filed with the Finance Committee include proposals by Massachusetts Democrat John Kerry to create a national infrastructure bank, Oregon Democrat Ron Wyden to append the text of his transportation bonds proposal, New York Democrat Charles E. Schumer to extend the transit commuting tax credit that expired at the end of last year and New Mexico Democrat Jeff Bingaman, to end federal subsidies to privatized highways.

Infrastructure Washington reps are openly saying that if there is trouble passing the GOP bill in the House, the Senate bill is unlikely to be viewed as more palatable, either to the chamber’s leadership or majority caucus. That makes another surface transportation extension more likely.

Gas Prices

As hopes for a bipartisan Senate highway financing plan dimmed, House Speaker John A. Boehner, R-Ohio, continued to revise the sales pitch for his bill to a wary GOP caucus. The House bill has drawn opposition from conservative groups including Heritage Action for America and the Club for Growth.

In a news release Monday, Boehner’s office touted the House bill as a tool to “help address rising gas prices” by removing “government barriers to American energy production.”

Previously, he has argued that provisions to streamline environmental approvals, eliminate duplicative and wasteful programs and expanding oil and gas drilling would create jobs.

Supporters have often made the case that expanded oil and natural gas drilling could help blunt the cost of gasoline at the pump, although environmentalists and energy analysts say it would have virtually no short-term effect on prices and a small long-term effect. A 2009 report by the Energy Information Administration said that lifting restrictions on drilling on the Outer Continental Shelf would decrease gasoline prices by only 3 cents to 5 cents a gallon — and not until 2030.

Summary - Where are we on Thursday morning - February 9th?

The Senate version of the transportation authorization bill is **S.1813**, the **Moving Ahead for Progress for the Twenty-First Century Act**, Majority Leader Reid intends to obtain a cloture vote on the version of S.1813 that was reported by the Environment and Public Works Committee. At least 60 votes are expected to invoke cloture.

Once cloture is obtained - perhaps as early as today - Majority Leader Reid will offer substitute legislation that will include in a new version of S.1813 provisions from the Banking, Finance and Commerce Committees.

Senator Kohl's amendment will be posed to this substitute bill. To obtain a vote, Senator Kohl may be forced to show that he has at least 60 votes for his amendment. We understand that Senator Mike Lee (R-UT), the Ranking Minority Member of the Senate Antitrust Subcommittee, will support the Kohl amendment.

We understand that the Commerce Committee provisions that may be included in the substitute bill could include some bipartisan, pro-rail customer amendments and STB reauthorization provisions that were developed by the bipartisan Commerce Committee staff in December. We will keep you posted on this development.

The freight railroad industry is very supportive of S.1813. Not surprising given that the legislation authorizes federal expenditures for a variety of rail transportation projects. The substitute legislation is likely to include provisions relaxing the requirement that the freight railroads install "positive train control" on certain of their trains. Positive train control is safety technology that seeks primarily to prevent collisions between freight and passenger trains. The freight railroad industry has argued that the current "positive train control" requirement is overly broad, unnecessary and unduly costly.

While a cloture vote on S.1813 could occur as early as today, the primary consideration of S.1813 by the Senate is likely to occur next week.

Meanwhile, House Speaker John A. Boehner, R-Ohio, was still working to shore up support for his bill (HR 7) within a contentious Republican caucus, in advance of floor action expected next week. To woo conservatives suspicious about spending \$260 billion over five years on surface transportation, Boehner has linked the highway bill to highly charged partisan initiatives — including an expansion of oil and gas drilling in the Arctic National Wildlife Refuge and the eastern Gulf of Mexico and off the California coast.

That strategy has unified the Democratic minority against the bill. Democrats are furious not only about the substance of the package but also with what they view as a closed process used in crafting it.

With little room for defections among Republicans, House leaders dangled yet another carrot in front of their conservative members, announcing late last week that a bill (HR 3548) designed to expedite approval of the Keystone XL oil pipeline will also be tacked onto the highway bill.

The House bill still faces other opposition. More than 600 organizations — including the usually pro-Republican U.S. Chamber of Commerce — oppose a provision in the financing package (HR 3864) that would eliminate dedicated funding for public transportation from fuel

tax receipts. The plan would unlink mass transit from a funding stream that has guaranteed funding for commuter transportation since the Reagan administration.

Other Republican-leaning conservative policy groups, including the Club for Growth, Heritage Action for America and the Competitive Enterprise Institute, also have criticized the bill.

Highway safety advocates scored a significant victory during a marathon House Transportation and Infrastructure Committee markup last week, when a provision to scrap current weight and size limits on trucks was removed. But industry groups (including NHSTA) said they were shopping for supporters for a floor amendment to reinstate the language.

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